

103^D CONGRESS
1ST SESSION

S. 1655

To reform certain statutes regarding civil asset forfeiture.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 10 (legislative day, NOVEMBER 2), 1993

Mr. JEFFORDS introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To reform certain statutes regarding civil asset forfeiture.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Civil Asset Forfeiture
5 Reform Act”.

6 **SEC. 2. LIMITATION OF CUSTOMS AND TAX EXEMPTION**
7 **UNDER THE TORT CLAIMS PROCEDURES.**

8 Section 2680(c) of title 28, United States Code, is
9 amended by striking “law-enforcement officer” and insert-
10 ing “law enforcement officer, except that this chapter and
11 section 1346(b) shall apply to a claim based on the neg-
12 ligent destruction, injury, or loss of goods or merchandise

1 (including real property) while in the possession of an offi-
 2 cer of customs or excise or any other law enforcement
 3 officer”.

4 **SEC. 3. LONGER PERIOD FOR FILING CLAIMS IN CERTAIN**
 5 **IN REM PROCEEDINGS.**

6 Rule C(6) of the Supplemental Rules for Certain Ad-
 7 miralty and Maritime Claims to the Federal Rules of Civil
 8 Procedures (28 U.S.C. App.) is amended by striking “10
 9 days” and inserting “60 days”.

10 **SEC. 4. CLAIM AFTER SEIZURE.**

11 Section 608 of the Tariff Act of 1930 (19 U.S.C.
 12 1608) is amended to read as follows:

13 **“SEC. 608. SEIZURE; CLAIMS; REPRESENTATION.**

14 **“(a) IN GENERAL.—**

15 **“(1) FILING OF CLAIM.—**At any time within 60
 16 days after the date on which a notice of seizure is
 17 first published, a person who claims a vessel, vehicle,
 18 aircraft, merchandise, or baggage seized under a law
 19 described in section 605 may file with the appro-
 20 priate customs officer a claim stating the person’s
 21 interest in the property.

22 **“(2) CONDEMNATION.—**On filing of a claim
 23 under paragraph (1), the customs officer shall trans-
 24 mit the claim, with a duplicate list and description
 25 of the articles seized, to the United States attorney

1 for the district in which the seizure was made, who
2 shall proceed to a condemnation of the merchandise
3 or other property in the manner prescribed by law.

4 “(b) COURT-APPOINTED COUNSEL.—

5 “(1) IN GENERAL.—If a person filing a claim
6 under subsection (a), or a claim regarding property
7 seized under another law that incorporates by ref-
8 erence the seizure, forfeiture, and condemnation pro-
9 cedures of the customs laws, is financially unable to
10 obtain representation of counsel, the court may ap-
11 point appropriate counsel to represent the person
12 with respect to the claim.

13 “(2) COMPENSATION.—(A) The court shall set
14 the compensation for counsel appointed under para-
15 graph (1) in an amount that is equivalent to that
16 provided for counsel appointed under section 3006A
17 of title 18, United States Code.

18 “(B) Compensation of counsel appointed under
19 paragraph (1) shall be paid from the Justice Assets
20 Forfeiture Fund established under section 524 of
21 title 28, United States Code.”.

22 **SEC. 5. BURDEN OF PROOF IN FORFEITURE PROCEEDINGS.**

23 Section 615 of the Tariff Act of 1930 (19 U.S.C.
24 1615) is amended to read as follows:

1 **“SEC. 615. BURDEN OF PROOF IN FORFEITURE PROCEED-**
 2 **INGS.**

3 “(a) IN GENERAL.—In a suit or action described in
 4 subsection (b), the burden of proof is on the Government
 5 to establish by clear and convincing evidence that the
 6 property is subject to forfeiture.

7 “(b) SUITS AND ACTIONS DESCRIBED.—A suit or ac-
 8 tion is described in this subsection if it is—

9 “(1) a suit or action (other than a suit or ac-
 10 tion arising under section 592) brought for the for-
 11 feiture of a vessel, vehicle, aircraft, merchandise, or
 12 baggage seized under any law relating to the collec-
 13 tion of duties on imports or tonnage; or

14 “(2) a suit or action brought for the recovery
 15 of the value of any vessel, vehicle, aircraft, merchan-
 16 dise, or baggage, because of a violation of that law.”.

17 **SEC. 6. RELEASE OF SEIZED PROPERTY FOR SUBSTANTIAL**
 18 **HARDSHIP.**

19 Section 614 of the Tariff Act of 1930 (19 U.S.C.
 20 1614) is amended—

21 (1) by inserting “(a) RELEASE UPON PAY-
 22 MENT.—” before “If”; and

23 (2) by adding at the end the following new sub-
 24 section:

25 “(b) RELEASE OF SEIZED PROPERTY FOR SUBSTAN-
 26 TIAL HARDSHIP.—

1 “(1) REQUEST FOR RELEASE.—(A) A claimant
2 is entitled to immediate release of seized property if
3 continued possession by the Government would cause
4 the claimant substantial hardship.

5 “(B) A claimant seeking release of property
6 under this subsection shall—

7 “(i) request possession of the property
8 from the appropriate customs officer; and

9 “(ii) state in the request the basis for such
10 release.

11 “(2) CIVIL ACTION.—(A) If, within 10 days
12 after the date on which a request is made under
13 paragraph (1), the subject property has not been re-
14 leased, the claimant may file a complaint in any dis-
15 trict court that would have jurisdiction over forfeit-
16 ure proceedings relating to the property.

17 “(B) A complaint under subparagraph (B) shall
18 state—

19 “(i) the nature of the claim to the seized
20 property;

21 “(ii) the reason why the continued posses-
22 sion by the United States Government pending
23 the final disposition of forfeiture proceedings
24 will cause substantial hardship to the claimant;
25 and

1 “(iii) the steps that the claimant has taken
2 to secure release of the property from the ap-
3 propriate customs officer.

4 “(3) RETURN OF PROPERTY.—If a complaint is
5 filed under paragraph (2), the district court shall
6 order that the property be returned to the claimant,
7 pending completion of proceedings by the United
8 States Government to obtain forfeiture of the prop-
9 erty, if the claimant shows that—

10 “(A) the claimant is likely to demonstrate
11 a possessory interest in the seized property; and

12 “(B) continued possession by the United
13 States Government of the seized property is
14 likely to cause substantial hardship to the
15 claimant.

16 “(4) CONDITIONS.—The court may place such
17 conditions on release of the property as the court
18 finds are appropriate to preserve the availability of
19 the property or its equivalent for forfeiture.

20 “(5) TIME FOR DECISION.—The district court
21 shall render a decision on a complaint filed under
22 paragraph (2) no later than 30 days after the date
23 of the filing, unless such 30-day limitation is ex-
24 tended by consent of the parties or by the court for
25 good cause shown.”.

1 **SEC. 7. JUSTICE ASSETS FORFEITURE FUND.**

2 Section 524(c) of title 28, United States Code, is
3 amended—

4 (1) in paragraph (1)—

5 (A) in the matter preceding subparagraph

6 (A) by striking “law enforcement”;

7 (B) by redesignating subparagraphs (H)

8 and (I) as subparagraphs (I) and (J), respec-

9 tively; and

10 (C) by inserting after subparagraph (G)

11 the following new subparagraph:

12 “(H) payment of court-awarded compensation

13 for representation of claimants pursuant to section

14 608(b) of the Tariff Act of 1930;” and

15 (2) in paragraph (9)(A), by striking “(H)” and

16 inserting “(I)”.

17 **SEC. 8. CLARIFICATION REGARDING FORFEITURES UNDER**
18 **THE CONTROLLED SUBSTANCES ACT.**

19 Section 511(a)(7) of the Controlled Substances Act

20 (21 U.S.C. 881(a)(7)) is amended by striking “without the

21 knowledge or consent of that owner” and inserting “either

22 without the knowledge of that owner or without the con-

23 sent of that owner”.

24 **SEC. 9. APPLICABILITY.**

25 The amendments made by this Act apply with respect

26 to claims filed under section 608 of the Tariff Act of 1930

- 1 and suits and actions filed under section 615 of that Act
- 2 on or after the date of enactment of this Act.

